IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11645 of 2006

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **Yes.**

2 To be referred to the Reporter or not ? **Yes.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **No**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **No**

5 Whether it is to be circulated to the civil judge ? **No**

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NATHALAL VAJSINH - Petitioner(s)
Versus
STATE OF GUJARAT THR' DY.COLLECTOR & 1 - Respondent(s)

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Appearance :
MR KM SHETH for Petitioner
MR LR PUJARI, AGP for Respondents

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 14/09/2006

ORAL JUDGMENT (Per : HON'LE MR.JUSTICE J.M.PANCHAL)

1. By filing this petition under Article 226 of the Constitution, the petitioner has prayed to set aside the award dated May 4, 2005, rendered by the Special Land Acquisition Officer, Jamnagar, in Land Acquisition Case No.9 of 2002 under Section 11(1) of the Land Acquisition Act, 1894 (“the Act” for short) on the ground that earlier consent award was made by the Special Land Acquisition Officer as contemplated by Section 11(2) of the Act and it could not have been treated as void ab-initio at the instance of decision dated May 2, 2005, taken at the secretariat level of the Narmada Water Resources and Water Supply Department, Government of Gujarat.

2. The petitioner was the owner of land bearing Survey No.127/2 admeasuring 19425 sq.mt. situated at village Sai Devaliya, Taluka: Bhanvad, District: Jamnagar. A proposal was received by the State Government to acquire the land of the petitioner with other lands for the public purpose of Veradi-2 Jal Sampati Yojana. On consideration of the said proposal,

the State Government was satisfied that the lands of village Sai Devaliya were likely to be needed for the said public purpose. In order to facilitate acquisition proceedings and avoid future litigations, the State Government had constituted a high level committee by Resolution dated February 10, 1999, which was subsequently amended by another Resolution dated December 15, 1999, and the committee was requested to recommend the rates at which compensation was to be paid to the claimants after entering into negotiations with them under Section 11(2) of the Act. The meeting of the high level committee was convened on December 13, 2000, and the rates at which consent award were to be made were indicated with reference to lands to be acquired for Veradi-2 Irrigation Scheme. The recommendations made by the high level committee were accepted by the State Government and therefore, the Government of Gujarat passed a Resolution dated February 22, 2001, and decided to acquire the lands of

village Sai Devaliya for Veradi-2 Irrigation Scheme by offering compensation to the claimants at the rates suggested by the high level committee. A copy of the said Resolution is produced by the petitioner at second Annexure-A to the petition. As the lands of village Sai Devaliya were likely to be needed for public purpose of Veradi-2 Irrigation Scheme, the Government issued Notification under Section 4 of the Act which was published in the official gazette on August 19, 2002. The claimants, including the petitioner in the instant petition, were satisfied with the rates of compensation suggested by the high level committee in its meeting dated December 13, 2000, as approved by the State Government vide its Resolution dated February 22, 2001, and therefore, they agreed in writing before the Collector to render consent awards in terms of Section 11(2) of the Act on the basis of recommendation of the high level committee dated December 13, 2000. The Special Land Acquisition Officer

was satisfied that the persons interested in the land who had appeared before him had agreed in writing on the matters to be included in the award to be rendered under Section 11(2) of the Act and therefore, without making any further inquiry, made a consent award in the case of the petitioner under Section 11(2) of the Act on August 2, 2004. A copy of the said award is produced by the petitioner at Annexure-B to the petition. By making the said award, the Special Land Acquisition Officer offered compensation to the claimants at the rate of Rs.3,187=50 ps. per Are for irrigated lands and Rs.2,125/- per Are for non-irrigated lands as indicated in the recommendations of the high level committee dated December 13, 2000. This is quite evident if one peruses the consent award of the Special Land Acquisition Officer which is produced by the petitioner at Annexure-B to the petition. However, after filing of the award in Collector's office as required by Section 12 of the Act, the the Additional

Collector, Rajkot, made a proposal for cancellation of the consent award by his letter dated September 20, 2004, on the ground that the Special Land Acquisition Officer had accepted recommendations of the high level committee though the committee had ceased to function because the committee was constituted on February 10, 1999, and the tenure of the said committee was only for a period of three years. The proposal made by the Additional Collector, Rajkot, was considered by the Revenue Department in consultation with Narmada Water Resources and Water Supply Department. After such consultation, it was decided to cancel the consent award dated August 2, 2005, rendered by the Special Land Acquisition Officer under Section 11(2) of the Act in Land Acquisition Case No.9/02, on the ground that while passing the consent award, the recommendations made by the committee which was not functional at the relevant point of time could not have been taken into

consideration. The record further shows that a decision was taken at the secretariat level of Narmada Water Resources and Water Supply Department on May 2, 2005, pursuant to which the Special Land Acquisition Officer was informed by communication dated May 4, 2005, that he should treat his consent award as void ab-initio and should pass regular award under the provisions of Section 11(1) of the Act. Accordingly, the Special Land Acquisition Officer treated his consent award passed under Section 11(2) of the Act on August 2, 2004, as void ab-initio and proceeded to make his award under Section 11(1) of the Act. The record shows that regular award under Section 11(1) of the Act was made by the Special Land Acquisition Officer on May 4, 2005, by which he offered compensation to the claimants at the rate of Rs.322/- per sq.mt. The case of the petitioner is that once consent award under Section 11(2) of the Act is made, the Special Land Acquisition Officer has no jurisdiction or

authority to cancel the same and make another award under Section 11(1) of the Act. What is claimed by the petitioner is that the Revenue Department of the State of Gujarat, which has no function to perform under Section 11 of the Act, could not have directed the Special Land Acquisition Officer to treat his award made under Section 11(2) of the Act as null and void nor could have directed him to make regular award under Section 11(1) of the Act, and therefore, regular award made on illegal directions given by the Revenue Department is liable to be set aside. According to the petitioner, on the basis of recommendation dated December 13, 2000, made by the high level committee, as approved by the State Government vide its Resolution dated February 22, 2001, several consent awards were made by the Special Land Acquisition Officer under Section 11(2) of the Act with reference to the lands of village Sai Devaliya which were acquired for Veradi-2 Irrigation Scheme but those awards

were neither treated as null and void nor cancelled and therefore, the petitioner could not have been discriminated in the matter of payment of compensation to him by making regular award under Section 11(1) of the Act. What is maintained by the petitioner is that making of second award relating to the same piece of land acquired is not contemplated by the provisions of the Land Acquisition Act at all and therefore, regular award made under Section 11(1) of the Act should be set aside. It is asserted that the Resolution dated February 22, 2001, approving the recommendations is not cancelled and/or revoked and therefore, the consent award under Section 11(2) of the Act made in the case could not have been treated as void nor second award under Section 11(1) of the Act could have been made. Under the circumstances, the petitioner has filed the instant petition and claimed reliefs to which reference is made earlier.

3. On service of notice, Mr.K.D.Upadhyay, Under Secretary, Revenue Department, Government

of Gujarat, has filed affidavit-in-reply on behalf of the respondent No.1 controverting the averments made in the petition. In the reply, it is stated that the Additional Collector, Rajkot, had made a proposal for cancellation of the consent award rendered in the instant case by his letter dated September 30, 2004, on the ground that the consent award was made by the Special Land Acquisition Officer on the basis of the rates recommended by the committee, which was constituted by the Narmada Water Resources and Water Supply Department, after the committee had ceased to function and therefore, decision was taken at the secretariat level of the Narmada Water Resources and Water Supply Department on May 2, 2005, to direct the Special Land Acquisition Officer to treat his award under Section 11(2) of the Act as null and void and to proceed to pass regular award under the provisions of Section 11(1) of the Act. What is mentioned in the reply is that the amount of

compensation determined by award dated May 4, 2005, passed under Section 11(1) of the Act is just and therefore, reliefs claimed in the petition should not be granted.

4. On service of copy of affidavit-in-reply filed on behalf of the respondent No.1, the petitioner has filed rejoinder-affidavit for highlighting point of discrimination meted out to him and pleaded that in view of the fact that at least five consent awards under Section 11(2) of the Act were rendered by the Special Land Acquisition Officer on the basis of recommendations of the high level committee dated December 13, 2000, though the term of the committee had already expired, the reliefs claimed in the petition should be granted by the Court.

5. This Court has heard Mr.Kamlesh M.Sheth, learned counsel for the petitioner as well as Mr.L.R.Pujari, learned Assistant Government Pleader for the respondents. This Court has also taken into consideration the documents

forming part of the petition.

6. From the record of the case, it is evident that pursuant to publication of Notification issued under Section 4(1) of the Act in the official gazette on August 19, 2002, the land of the petitioner and other lands of village Sai Devaliya, Taluka: Bhanvad, District: Jamnagar, were acquired for the public purpose of Veradi-2 Jal Sampati Yojana. Annexure-A to the petition would indicate that by Resolution dated February 10, 1999, the State Government had constituted a high level committee to facilitate acquisition proceedings and make payment of compensation to the claimants by consent to avoid usual difficulties and future litigations. This committee was constituted in relation to the lands which were to be acquired from village Sai Devaliya, Taluka: Bhanvad, District: Jamnagar, for the public purpose of Veradi-2 Jal Sampati Yojana, which is quite evident from the contents of the document produced at Annexure-A to the petition. Thus,

there is no manner of doubt that a special high level committee was constituted only in order to see that consent awards were rendered with reference to the lands which were acquired from village Sai Devaliya and to see that future Court cases were avoided. The committee, in right earnest, undertook the job entrusted to it and in its meeting which was convened on December 13, 2000, decided that the claimants should be offered compensation at the rate of Rs.3,187=50 ps. per Are for irrigated lands and Rs.2,125/- per Are for non-irrigated lands. This is quite evident from the contents of Annexure-A to the petition. The recommendations made by the special high level committee in its meeting held on December 13, 2000, were accepted by the State Government vide Resolution dated February 22, 2001, was issued by the Narmada Water Resources and Water Supply Department of the State of Gujarat, stipulating that the claimants whose lands were acquired from village Sai Devaliya for

Veradi-2 Irrigation Scheme should be offered compensation at the rate of Rs.3,187=50 per are for Bagayat land and Rs.2,125/- per are for Jirayat land, subject to the conditions stipulated therein. The persons interested in the land, including the petitioner, had appeared before the Special Land Acquisition Officer and agreed in writing that consent award be passed under Section 11(2) of the Act in terms of Resolution dated February 22, 2001. Thereupon, the Special Land Acquisition Officer was satisfied that all the persons interested in the land, including the petitioner, who had appeared before him had agreed in writing that consent awards be passed in terms of Resolution dated February 22, 2001. Therefore, he, without making further inquiry, made an award in terms of such agreement on August 2, 2004. A copy of the consent award made by the Special Land Acquisition Officer under Section 11(2) of the Act is produced by the petitioner at Annexure-B to the petition. It may be stated that the

consent award under Section 11(2) of the Act was rendered by the Deputy Collector, Jamnagar, who was conferred powers of the Collector under Section 3(c) of the Act and this is quite evident from the consent award rendered under Section 11(2) of the Act. However, surprisingly, the Additional Collector, Rajkot, as if he was exercising appellate powers over the consent award rendered by the Special Land Acquisition Officer under Section 11(2) of the Act, proposed to the State Government to cancel the consent award on the ground that consent award was based on the recommendation of the special high level committee, term of which had expired before passing of the consent award. This Court fails to understand as to under which provision the Additional Collector, Rajkot, had made such a proposal to the State Government. The Scheme of the Act is such that the award has to be rendered by the officer who is conferred with powers of Collector as contemplated by Section 3(c) of

the Act. The consent award was rendered by the Deputy Collector and Special Land Acquisition Officer, Jamnagar. Therefore, this Court is of the firm opinion that the Additional Collector, Rajkot, could not have proposed to the State Government to cancel the consent award rendered under Section 11(2) of the Act as if he was exercising appellate powers under Section 11 of the Act. Be that as it may, the State Government considered the said proposal and a decision was taken at the secretariat level of the Narmada Water Resources and Water Supply Department on May 2, 2005, to direct the Special Land Acquisition Officer to treat his consent award passed under Section 11(2) of the Act as void ab-initio and proceed to pass regular award under Section 11(1) of the Act, vide communication dated February 2, 2005. The scheme of the Act would suggest that once an award is made under Section 11 of the Act, whether under sub-section (1) or sub-section (2) of the Act, the award becomes final and

binding as far as the State Government is concerned. The law on the point is settled and even the remedy of making Reference to the Court at the instance of the Government is not available to the Government for the purpose of reduction of amount offered by the award. Therefore, the secretariat level of the Narmada Water Resources and Water Supply Department could not have directed the Special Land Acquisition Officer to treat his consent award as void ab-initio nor could have directed the Special Land Acquisition Officer to pass regular award under Section 11(1) of the Act. There is no manner of doubt that those directions are totally illegal and contrary to the provisions of the Act.

7. What is relevant to notice is that on May 2, 2005, a decision was taken at the secretariat level of the Narmada Water Resources and Water Supply Department to direct the Special Land Acquisition Officer to treat his consent award as void ab-initio and proceed to pass regular award under Section 11 of the Act.

This decision was conveyed to the Special Land Acquisition Officer on May 3, 2005, and on the next day, i.e. on May 4, 2005, regular award was passed by the Special Land Acquisition Officer under Section 11(1) of the Act. These material facts stated by the petitioner in the rejoinder-affidavit are not disputed by the respondents. The scheme of the Act is such that the Collector is under a statutory duty to make an enquiry into the valuation of the land and into the respective interest of the persons claiming compensation and to make an award as required under the provisions of Section 11 of the Act. This Court is at loss to understand as to which inquiry was made by the Special Land Acquisition Officer after he received decision dated May 2, 2004, of the Secretariat level of Narmada Water Resources and Water Supply Department on May 3, 2004 on the basis of which he made an award under Section 11(1) of the Act on May 4, 2004, running into roughly seventy pages. This exhibits the

cursory manner in which statutory duty is performed and therefore the award made under Section 11(1) of the Act is rendered vulnerable. Moreover, Section 11 of the Principal Act is applicable in the State of Gujarat which inter-alia requires that no award shall be made by the Collector under section 11(1) of the Act without previous approval of the State Government. However, there is no provision that no award shall be made by the Collector under Section 11(2) of the Act without the previous approval of the State Government. Section 12 of the Act attaches finality to the award of the Collector made under Section 11 of the Act and inter-alia provides that after the award is filed in Collector's office it shall be final and conclusive evidence as between the Collector and the persons interested, regarding three matters, i.e. (1) of the true area, (2) value of the land and (3) apportionment of the compensation among the persons interested. The finality attached to the award of the

Special Land Acquisition made under Section 11(2) of the Act on August 2, 2004, could not have been set at naught by Secretariat level of Narmada Water Resources and Water Supply Department when the law does not require that the Special Land Acquisition Officer cannot make award under Section 11(2) without the prior approval of the State Government. Therefore, the secretariat level of the Narmada Water Resources and Water Supply Department had no jurisdiction to direct the Special Land Acquisition Officer to treat the consent award passed under Section 11(2) of the Act as void ab-initio and to make award under Section 11(1) of the Act. Therefore, the award made under Section 11(1) of the Act, which proceeds on illegal directions, is liable to be set aside.

8. Section 11(2) of the Act stipulates that notwithstanding anything contained in sub-section (1), if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appear before him

have agreed in writing on the materials to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may, without making further inquiry, make an award according to the terms of such agreement. What is relevant for the purpose of passing consent award under Section 11(2) of the Act is that there must be an agreement between all the persons interested in the lands who appear before the Collector that award be passed in terms of the said agreement and that there must be satisfaction of the Collector that all the persons interested in the land have agreed in writing to make an award according to the terms of such agreement. Once these two primary conditions are satisfied, it is not necessary for the Collector to make further inquiry and he is entitled to make an award according to the terms of such agreement which is in ordinary parlance known as “consent award”. Once the consent award under Section 11(2) of the Act is made,

it is binding on the parties including the Government because the right of an interested person to seek Reference to the Court under Section 18 of the Act stands forfeited. Here, in the instant case, all the persons interested in the land, including the petitioner, who had appeared before the Collector, had agreed in writing that award in terms of Resolution of the Government dated February 22, 2001, be passed. The Collector was also satisfied that there was agreement between all the persons interested in the land that consent award be passed in terms of Resolution dated February 22, 2001, and thereafter, he had passed the consent award on August 2, 2004. The power to make award under Section 11(2) of the Act is a statutory power. Therefore, no direction could have been issued by the secretariat level of the Narmada Water Resources and Water Supply Department to the Special Land Acquisition Officer to treat his award as ab-initio void and exercise his statutory power by passing another regular award under Section

11(1) of the Act.

9. What is relevant to notice is that though the term of the committee which recommended to offer compensation to the claimants at the rate of Rs.3187=50 ps. per Are for Bagayat lands and Rs.2,125/- per Are for Jirayat lands, pursuant to which the Government had passed Resolution dated February 22, 2001, the Resolution dated February 22, 2001, was never set aside by the Government. It is not the case of the respondents that any decision worth the name was taken by the Government to set aside the Resolution dated February 22, 2001. Therefore, in no circumstances, the consent award could have been treated as void ab-initio. On the facts and in the circumstances of the case, this Court is of the opinion that regular award passed under Section 11(1) of the Act on May 4, 2005, proceeds on illegal directions issued by the secretariat level of the Narmada Water Resources and Water Supply Department and therefore, the same is liable to be set aside.

10. Further, it is rightly pleaded by Mr.Kamlesh M.Sheth, learned counsel for the petitioner, that once an award is made under Section 11 of the Act, the Special Land Acquisition Officer has no power either to set aside or to modify the same. In ***Orissa Industrial Infrastructure Development Corporation v. Supai Munda - AIR 2004 SC 390***, an award under Section 11(1) of the Act was made but subsequently, consent award under Section 11(2) of the Act was passed. The question considered by the Supreme Court was whether once proceedings before the Collector stand terminated in terms of award under Section 11(1) of the Act, passing of subsequent award by Collector under Section 11(2) pursuant to alleged agreement with land owner was permissible? This question has been answered by the Supreme Court in the following terms:

> *"11. Pursuant to an order of 4th September, 2003 passed by this Court, the State Government filed a translated copy*

of the Award dated 25-7-1992 (shown as 25-8-1992 through inadvertence which has been subsequently corrected as 25-7-1992). Even otherwise the Award was made on 25-7-1992 is not disputed. The copy of the Award dated 25-7-1992 is accompanied by an affidavit dated 12-11-2003 sworn in by Mr. J.K. Das, Advocate on behalf of the appellants in Civil Appeal arising out of SLP (C) No. 19869 of 1997. The Award of 25-7-1992 was clearly passed in a proceeding under Section 11 of the Act. At the time of the hearing learned counsel for the State, Mr. J.K. Das, also produced an English version of the Award dated 6-8-1992 said to have been passed pursuant to the agreement dated 6-8-1992. The subsequent Award dated 6-8-1992 is shown to have been passed under Section 11(2) of the Act. We are surprised to note as to how the subsequent award dated 6-8-1992 was made pursuant to the alleged agreement made on 6-8-1992. We smell the rats. When the Award is made by the Collector under Section 11 of the Act, the proceedings before him stand terminated as soon as the Award is made. The

provision of sub-section (2) of Section 11 is attracted only at any stage of the proceedings before the Collector, that is to say, if the Collector has not passed the Award under Section 11 of the Act and the proceedings before him were still subsisting. In the present case, it clearly appears from the Award dated 25-7-1992 itself that it was made under Section 11 of the Act. The claimant Shri Supai Munda (respondent herein) has categorically stated that he received the compensation amount pursuant to the notice under Section 12(2) of the Act, which was issued on 27-7-1992. That statement remains uncontroverted. In our view, therefore, there was no occasion for the learned Collector to have recourse to sub-section (2) of Section 11 of the Act. There can never be two awards one under Section 11 of the Act and another under Section 11(2) of the Act over the same land acquired."

A bare perusal of the above-quoted paragraph makes it very clear that when the award is made by the Collector under Section 11 of the Act, the proceedings before him stand

terminated as soon as the award is made and the provisions of sub-section (2) of Section 11 of the Act are only attracted at any stage of the proceedings before the Collector, that is to say, if the Collector had not passed the award under Section 11 of the Act and the proceedings before him were still subsisting. In the instant case, award under Section 11(2) of the Act was made on August 2, 2004, and therefore, the proceedings before the Special Land Acquisition Officer stood terminated on making of award under Section 11(2) of the Act. As explained by the Supreme Court, there can never be two awards, one under Section 11 and another under Section 11(2) of the Act for the same acquired land. Therefore, the Special Land Acquisition Officer had no jurisdiction to pass another award under Section 11(1) of the Act at the behest of the secretariat level of the Narmada Water Resources and Water Supply Department. The effect of making of an award under Section 11(1) of the Act is that the Special Land

Acquisition Officer has reviewed his earlier award made under Section 11(2) of the Act and set aside the same. A Collector acting under the Act is not competent to review his order awarding compensation as Section 53 of the Act provides for application of Civil Procedure Code only to proceedings before the Court under the Act but not to proceedings before the Collector. The exercise undertaken by the Special Land Acquisition Officer of making an award under Section 11(1) of the Act is without jurisdiction and contrary to the scheme of the Act as a result of which, the same is liable to be set aside.

11. The record would further show that on the basis of Resolution dated February 22, 2001, at least five consent awards under Section 11(2) of the Act were rendered by the Deputy collector and Special Land Acquisition Officer, Jamnagar, with reference to the lands which were acquired from village Sai Devaliya though the term of the special high level committee had expired. This fact has been

brought on record of the petition by the petitioner by way of filing rejoinder. Paragraph-6 of the rejoinder would indicate that five consent awards under Section 11(2) of the Act were rendered by the Deputy Collector and Special Land Acquisition Officer between February 9, 2002 to June 30, 2003, i.e. after the term of the special committee had expired on February 9, 2002. The petitioner has made a specific and categorical statement on oath by filing rejoinder that the claimants who were parties to those consent awards have been paid compensation and that those awards were never directed to be treated as void ab-initio. This statement made on oath is not denied by the respondents. In view of this categorical statement made on oath, there is no manner of doubt that the petitioner has been discriminated in the matter of payment of compensation with reference to his acquired land. Those whose lands were acquired from this very village have been paid compensation at the rate of

Rs.3,187=50 ps. per Are for Bagayat lands and Rs.2,125/- per Are for Jirayat lands whereas the petitioner is offered compensation at the rate of Rs.322/- per Are for Bagayat and Rs.258/- per Are for Jirayat lands. The hostile discrimination meted out to the petitioner which is quite contrary to the principles enshrined in Article 14 of the Constitution is neither explained nor sought to be justified by the respondents and therefore, cannot be upheld. On this ground also, the award made by the Special Land Acquisition Officer under Section 11(1) of the Act on May 4, 2005, deserves to be set aside.

12. For the foregoing reasons, the petition succeeds. The award dated May 4, 2005, rendered by the Deputy Collector and Land Acquisition and Rehabilitation (Irrigation), Jamnagar, under Section 11(1) of the Act, which is produced at Annexure-C to the petition, is hereby quashed. The consent award dated August 2, 2004, rendered by the Deputy Collector, Land Acquisition and

Rehabilitation (Irrigation), Jamnagar, under Section 11(2) of the Act, which is produced at Annexure-B to the petition, is hereby restored. The respondents are directed to implement the said award as early as possible and make payment of compensation mentioned therein, preferably on or before November 30, 2006. Rule is made absolute accordingly. There shall be no order as to costs.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

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